

1 DEBRA WONG YANG
United States Attorney
2 GARY PLESSMAN
Assistant United States Attorney
3 Chief, Civil Fraud Section
California State Bar No. 101233
4 Room 7516, Federal Building
300 North Los Angeles Street
5 Los Angeles, California 90012
Telephone: (213) 894-2474
6 Facsimile: (213) 894-2380
Email: gary.plessman@usdoj.gov
7 Attorneys for Plaintiff
UNITED STATES OF AMERICA
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 EXECUTIVE FINANCIAL HOME LOAN
15 CORP., dba Executive Home Loan, a
16 California corporation,

17 MICHAEL NIKRAVESH, individually
and as an officer of Executive
18 Financial Home Loan Corp., and

19 RON FATTAL, individually and as
an officer of Executive Financial
20 Home Loan Corp.,

21 Defendants.
22

Case No.

**STIPULATED JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION**

23 Plaintiff, the United States of America, acting upon
24 notification and authorization to the Attorney General by the
25 Federal Trade Commission ("FTC" or the "Commission"), has
26 commenced this action by filing the complaint herein, and
27 Defendants have waived service of the summons and the complaint.
28 The parties, represented by the attorneys whose names appear

1 hereafter, have agreed to settlement of this action without
2 adjudication of any issue of fact or law, and without Defendants
3 admitting liability for any of the violations alleged in the
4 complaint.

5 **THEREFORE**, on the joint motion of the parties, it is hereby
6 **ORDERED, ADJUDGED AND DECREED** as follows:

7 **FINDINGS**

8 1. This Court has jurisdiction over the subject matter and
9 the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and
10 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).

11 2. Venue is proper as to all parties in this District.

12 3. The activities of Defendants are in or affecting
13 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

14 4. The complaint states a claim upon which relief may be
15 granted against Defendants, under Sections 5(a), 5(m)(1)(A), and
16 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
17 §§ 45(a), 45(m)(1)(A), and 53(b).

18 5. Defendants have entered into this Stipulated Judgment
19 and Order for Permanent Injunction ("Order") freely and without
20 coercion. Defendants further acknowledge that they have read the
21 provisions of this Order and are prepared to abide by them.

22 6. Plaintiff and Defendants hereby waive all rights to
23 appeal or otherwise challenge or contest the validity of this
24 Order.

25 7. Defendants have agreed that this Order does not entitle
26 Defendants to seek or to obtain attorneys' fees as a prevailing
27 party under the Equal Access to Justice Act, 28 U.S.C. § 2412,
28 and Defendants further waive any rights to attorneys' fees that

may arise under said provision of law.

8. Entry of this Order is in the public interest.

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

1. "Asset" means any legal or equitable interest in, or right or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. "Customer" means any person who is or may be required to pay for goods or services offered through telemarketing.

3. "Defendants" means the Corporate Defendant and Individual Defendants. The "Corporate Defendant" is Executive Financial Home Loan Corp., a California corporation. The "Individual Defendants" are Michael Nikraves, individually and as an officer of the Corporate Defendant, and Ron Fattal, individually and as an officer of the Corporate Defendant.

4. "Established business relationship" means a relationship between the seller and a person based on: (a) the person's purchase, rental, or lease of the seller's goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a

1 telemarketing call.

2 5. "National Do Not Call Registry" means the National Do
3 Not Call Registry, which is the "do-not-call" registry maintained
4 by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

5 6. "Representatives" means Defendants' successors,
6 assigns, officers, agents, servants, employees and those persons
7 in active concert or participation with them who receive actual
8 notice of this Order by personal service or otherwise.

9 7. "Seller" means any person who, in connection with a
10 telemarketing transaction, provides, offers to provide, or
11 arranges for others to provide goods or services to the customer
12 in exchange for consideration whether or not such person is under
13 the jurisdiction of the Commission.

14 8. "Telemarketer" means any person who, in connection with
15 telemarketing, initiates or receives telephone calls to or from a
16 customer or donor.

17 9. "Telemarketing Sales Rule" or "Rule" means the FTC Rule
18 entitled "Telemarketing Sales Rule," 16 C.F.R. § 310, attached
19 hereto as Appendix A or as may be hereafter amended.

20 10. "Telemarketing" means a plan, program, or campaign
21 which is conducted to induce the purchase of goods or services or
22 a charitable contribution, by use of one or more telephones and
23 which involves more than one interstate telephone call. The term
24 does not include the solicitation of sales through the mailing of
25 a catalog which: contains a written description or illustration
26 of the goods or services offered for sale; includes the business
27 address of the seller; includes multiple pages of written
28 material or illustrations; and has been issued not less

1 frequently than once a year, when the person making the
2 solicitation does not solicit customers by telephone but only
3 receives calls initiated by customers in response to the catalog
4 and during those calls takes orders only without further
5 solicitation. For purposes of the previous sentence, the term
6 "further solicitation" does not include providing the customer
7 with information about, or attempting to sell, any other item
8 included in the same catalog which prompted the customer's call
9 or in a substantially similar catalog.

10 11. "Outbound telephone call" means a telephone call
11 initiated by a telemarketer to induce the purchase of goods or
12 services or to solicit a charitable contribution.

13 12. "Person" means any individual, group, unincorporated
14 association, limited or general partnership, corporation, or
15 other business entity.

16 ORDER

17 **I. PROHIBITION AGAINST ABUSIVE** 18 **TELEMARKETING PRACTICES**

19 **IT IS ORDERED** that, in connection with telemarketing,
20 Defendants and their Representatives are hereby permanently
21 restrained and enjoined from engaging in, causing other persons
22 to engage in, or assisting other persons to engage in, violations
23 of the Telemarketing Sales Rule, including but not limited to:

24 A. Initiating any outbound telephone call to a person's
25 telephone number on the National Do Not Call Registry of persons
26 who do not wish to receive outbound telephone calls to induce the
27 purchase of goods or services unless the seller proves:

28 1. The seller has obtained the express agreement, in

1 writing, of such person to place calls to that
2 person. Such written agreement shall clearly
3 evidence such person's authorization that calls
4 made by or on behalf of a specific party may be
5 placed to that person, and shall include the
6 telephone number to which the calls may be placed
7 and the signature of that person; or

8 2. The seller has an established business
9 relationship with such person and that person has
10 not previously stated that he or she does not wish
11 to receive outbound telephone calls made by or on
12 behalf of the seller; or

13 B. Initiating any outbound telephone call to a telephone
14 number within a given area code without first paying the required
15 annual fee for access to the telephone numbers within that area
16 code that are on the National Do Not Call Registry;

17 *Provided, however,* that if the Commission promulgates rules
18 that modify or supersede the Telemarketing Sales Rule, in whole
19 or part, Defendants shall comply fully and completely with all
20 applicable requirements thereof, on and after the effective date
21 of any such rules.

22 23 **II. CIVIL PENALTY AND RIGHT TO REOPEN**

24
25 IT IS FURTHER ORDERED that:

26 A. Judgment in the amount of One Million, One Hundred and
27 Thirty-Eight Thousand, Five Hundred and Fifty-One Dollars
28 (\$1,138,551.00) is hereby entered against the Corporate Defendant

1 as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal
2 Trade Commission Act, 15 U.S.C. § 45(m)(1)(A). Based upon the
3 Corporate Defendant's sworn representations in its financial
4 statements, full payment of the foregoing civil penalty is
5 suspended except for Fifty Thousand Dollars (\$50,000.00),
6 contingent upon the accuracy and completeness of the financial
7 statements, as set forth in Subparagraphs C and D of this
8 Paragraph.

9 B. Prior to or concurrently with their execution of this
10 Order, the Corporate Defendant shall transfer Fifty Thousand
11 Dollars (\$50,000.00), as a non-suspended civil penalty payment,
12 to its attorney, who shall hold the entire sum for no purpose
13 other than payment to the Treasurer of the United States after
14 entry of this Order by the Court. Within ten (10) days of
15 receipt of notice of the entry of this Order, the Corporate
16 Defendant's attorney shall transfer such civil penalty payment in
17 the form of a wire transfer or certified or cashier's check made
18 payable to the Treasurer of the United States. The check or
19 written confirmation of the wire transfer shall be delivered to:
20 Director, Office of Consumer Litigation, U.S. Department of
21 Justice Civil Division, P.O. Box 386, Washington, D.C. 20044.
22 The cover letter accompanying the check shall include the title
23 of this litigation and a reference to DJ #102-3352. Such
24 transfer by the Corporate Defendant's attorney shall constitute
25 partial satisfaction of the judgment.

26 C. Upon payment by the Corporate Defendant's attorney as
27 provided in Subparagraph B of this Paragraph, the remainder of
28 the civil penalty judgment shall be suspended subject to the

1 conditions set forth in Subparagraph D of this Paragraph.

2 D. Plaintiff's agreement to this Order is expressly
3 premised upon the truthfulness, accuracy and completeness of the
4 Corporate Defendant's sworn financial statements and supporting
5 documents submitted to the Commission, namely those of Executive
6 Financial Home Loan Corp, signed and dated February 23, 2005, and
7 September 12, 2005, which include material information upon which
8 Plaintiff relied in negotiating and agreeing to this Order. If,
9 upon motion by Plaintiff, this Court finds that the Corporate
10 Defendant has failed to disclose any material asset or materially
11 misstated the value of any asset in the financial statements and
12 related documents described above, or has made any other material
13 misstatement or omission in the financial statements and related
14 documents described above, then this Order shall be reopened and
15 suspension of the judgment shall be lifted for the purpose of
16 requiring payment of civil penalty in the full amount of the
17 judgment (\$1,138,551.00), less the sum of all amounts paid to the
18 Treasurer of the United States pursuant to Subparagraph B of this
19 Paragraph. Provided, however, that in all other respects this
20 Order shall remain in full force and effect, unless otherwise
21 ordered by the Court.

22 E. In accordance with 31 U.S.C. § 7701, the Corporate
23 Defendant is hereby required, unless it has done so already, to
24 furnish to Plaintiff and the FTC its taxpayer identifying number
25 (social security numbers or employer identification numbers)
26 which shall be used for purposes of collecting and reporting on
27 any delinquent amount arising out of the Corporate Defendant's
28 relationship with the government.

1 F. The Corporate Defendant agrees that the facts as
2 alleged in the complaint filed in this action shall be taken as
3 true, without further proof, in any subsequent litigation filed
4 by or on behalf of the Commission to collect any unpaid amount or
5 otherwise enforce its rights pursuant to this Order, including a
6 nondischargeability complaint filed in any bankruptcy case.

7 G. Proceedings instituted under this Paragraph are in
8 addition to, and not in lieu of, any other civil or criminal
9 remedies that may be provided by law, including any other
10 proceedings the Plaintiff may initiate to enforce this Order.

11 12 **III. RECORD KEEPING PROVISIONS**

13 **IT IS FURTHER ORDERED** that, for a period of five (5) years
14 from the date of entry of this Order, Defendants, and their
15 successors and assigns, shall maintain and make available to the
16 Plaintiff or Commission, within seven (7) days of the receipt of
17 a written request, business records demonstrating compliance with
18 the terms and provisions of this Order.

19 20 **IV. DISTRIBUTION OF ORDER BY DEFENDANTS AND** 21 **ACKNOWLEDGMENTS OF RECEIPT**

22 **IT IS FURTHER ORDERED** that Defendants, and their successors
23 and assigns, shall within thirty (30) days of the entry of this
24 Order, provide a copy of this Order including Appendix A to all
25 of their owners, principals, members, officers, and directors, as
26 well as managers, agents, servants, employees, and attorneys
27 having decision-making authority with respect to the subject
28 matter of this Order; secure from each such person a signed

1 statement acknowledging receipt of a copy of this Order; and
2 shall, within ten (10) days of complying with this Paragraph,
3 file an affidavit with the Court and serve the Commission, by
4 mailing a copy thereof, to the Associate Director for
5 Enforcement, Federal Trade Commission, 601 New Jersey Avenue,
6 N.W., Washington, D.C. 20580, setting forth the fact and manner
7 of their compliance, including the name and title of each person
8 to whom a copy of the Order has been provided.

9
10 **V. NOTIFICATION OF BUSINESS CHANGES**

11 **IT IS FURTHER ORDERED** that the Corporate Defendant, and its
12 successors and assigns, shall notify the Associate Director for
13 Enforcement, Federal Trade Commission, 601 New Jersey Avenue,
14 N.W., Washington, D.C. 20580, at least thirty (30) days prior to
15 any change in the Corporate Defendant's business, including, but
16 not limited to, merger, incorporation, dissolution, assignment,
17 and sale, which results in the emergence of a successor
18 corporation, the creation or dissolution of a subsidiary or
19 parent, or any other change, which may affect the Corporate
20 Defendant's obligations under this Order.

21
22 **VI. NOTIFICATION OF INDIVIDUALS' AFFILIATIONS**

23 **IT IS FURTHER ORDERED** that each Individual Defendant shall,
24 for a period of seven (7) years from the date of entry of this
25 Order, notify the Associate Director for Enforcement, Federal
26 Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C.
27 20580, within thirty (30) days of his or her affiliation with a
28 new business or employment whose activities include

1 telemarketing.

2
3 **VII. COMMUNICATION WITH DEFENDANTS**

4 **IT IS FURTHER ORDERED** that for the purposes of compliance
5 reporting, if undersigned counsel no longer represents a
6 Defendant, Plaintiff and the Commission are authorized to
7 communicate directly with such Defendant.

8
9 **VIII. FEES AND COSTS**

10 **IT IS FURTHER ORDERED** that each party to this Order hereby
11 agrees to bear its own costs and attorneys' fees incurred in
12 connection with this action.

13
14 **IX. SEVERABILITY**

15 **IT IS FURTHER ORDERED** that the provisions of this Order are
16 separate and severable from one another. If any provision is
17 stayed or determined to be invalid, the remaining provisions
18 shall remain in full force and effect.

19
20 **X. RETENTION OF JURISDICTION**

21 **IT IS FURTHER ORDERED** that this Court shall retain
22 jurisdiction of this matter for purposes of construction,
23 modification and enforcement of this Order.

24
25 **XI. COMPLETE SETTLEMENT**

26 The parties, by their respective counsel, hereby consent to
27 entry of the foregoing Order which shall constitute a final
28 judgment and order in this matter. The parties further stipulate

1 and agree that the entry of the foregoing Order shall constitute
2 a full, complete and final settlement of this action.

3
4 **JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and
5 against Defendants, pursuant to all the terms and conditions
6 recited above.

7 **SO ORDERED** this _____ day of _____, 200_.

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10 _____
11 UNITED STATES DISTRICT JUDGE
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1 **FOR THE PLAINTIFF:**

2 FOR THE UNITED STATES OF AMERICA:

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4 PETER D. KEISLER
5 Assistant Attorney General
6 Civil Division
7 for U.S. Department of Justice

8 DEBRA WONG YANG
9 United States Attorney
10 Central District of California

11 By: _____

12 Assistant U.S. Attorney
13 1200 U.S. Courthouse
14 312 North Spring Street
15 Los Angeles, CA 90012
16 PHONE:
17 FAX:
18 EMAIL:

19 EUGENE THIROLF
20 Director
21 Office of Consumer Litigation

22 _____
23 Daniel K. Crane-Hirsch
24 Trial Attorney
25 Office of Consumer Litigation
26 P.O. Box 386
27 U.S. Department of Justice
28 Washington, D.C. 20044-0386
PHONE: 202-616-8242
FAX: 202-5148742
EMAIL: daniel.crane-hirsch@usdoj.gov

1 FOR THE FEDERAL TRADE COMMISSION:

2
3 JEFFREY KLURFELD
4 Regional Director
5 Western Region
6 Federal Trade Commission

7 KERRY O'BRIEN
8 Attorney
9 Federal Trade Commission
10 901 Market Street, Suite 570
11 San Francisco, California
12 PHONE: 415-848-5189
13 FAX: 415-848-5142
14 EMAIL: kobrien@ftc.gov
15
16
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1
2 **FOR THE DEFENDANTS:**

3
4 EXECUTIVE FINANCIAL HOME LOAN CORP.

5 By: _____
6 [name]
[title]

7
8 _____
MICHAEL NIKRAVESH

9
10 _____
RON FATTAL

11
12
13 _____
CLAYTON S. FRIEDMAN
MICHAEL YAGHI
14 Buchalter Nemer
18400 Von Karman Ave, Ste 800
15 Irvine, California 92612-0514
PHONE: 949-224-6284
16 FAX: 949-224-6406

17 Attorney for Defendants
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APPENDIX A

["Telemarketing Sales Rule," 16 C.F.R. § 310]